

Agreement for Hearing Officer Services

This Agreement for Hearing Officer Services ("Agreement") is entered by and between Broward County, a political subdivision of the state of Florida, hereinafter referred to as "County," and _____, hereinafter referred to as "Hearing Officer," collectively, the "Parties" and each individually a "Party," and shall be effective on the date it is fully executed by the Parties ("Effective Date").

Recitals

A. The Board of County Commissioners has approved the appointment of Hearing Officer to provide services to County agencies, on an as-needed basis.

B. The Parties desire to enter into this Agreement to set forth the services to be provided by Hearing Officer and the compensation for same to be provided by County under the terms and conditions provided for herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

Article 1 - Definitions and Identifications

- 1.1 **Agreement** - This document, Articles 1 through 15, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 **Contract Administrator** - The Broward County Administrator, the Director of the County Department utilizing the services of Hearing Officer, or the designee of such County Administrator or Director. The primary responsibilities of the Contract Administrator are to coordinate and communicate with Hearing Officer and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein.
- 1.3 **County Attorney** - The chief legal counsel for County who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.

Article 2 - Scope of Services

- 2.1 Hearing Officer agrees to provide services as a Hearing Officer at the request of the Contract Administrator, on an as-needed basis, as more specifically described

herein. By entering into this Agreement, County does not guarantee that work assignments will be made to Hearing Officer. Failure to issue work under this Agreement shall not be deemed a breach of this Agreement.

- 2.2 Hearing Officer agrees to provide services as a Hearing Officer pursuant to various Broward County ordinances and chapters of Florida Statutes including, but not limited to, Chapters 145, 162, and 489, Florida Statutes, and Chapters 4, 7, 8½, 9, 20, 27, and 39 of the Broward County Code of Ordinances for violations or appeals of administrative decisions or regulations related to, but not limited to, building, zoning, building contractors, tree trimmers, child care facilities licensing, family child care homes licensing, animal care, consumer protection, Florida's Health Care Responsibility Act, and environmental protection. Hearing Officer agrees that the proceedings shall be conducted in accordance with the requirements set forth in the applicable provisions of the Florida Statutes and Broward County Code of Ordinances, as each may be amended from time to time.
- 2.3 Hearing Officer agrees that, if applicable, at the conclusion of each hearing a written final order ("Order") shall be prepared including findings of facts and conclusions of law.
- 2.4 The Contract Administrator, in his or her sole and exclusive discretion, shall determine when Hearing Officer services are required.
- 2.5 During the entire term of this Agreement, Hearing Officer agrees to maintain his or her membership in the Florida Bar in good standing and remain engaged in the practice of law.

Article 3 - Payment

- 3.1 Hearing Officer shall be compensated by County at the rate of One Hundred Fifty Dollars (\$150.00) per hour, or fractional part thereof, up to a maximum of One Thousand Five Hundred Dollars (\$1,500.00) for each case, based on the number of hours spent in hearing the case and, thereafter, drafting the Order. This amount includes preparation and research for participation at the hearings, conferences with counsel, consideration and rendering of decisions on motions, conducting the hearing, drafting or reviewing proposed Orders or rulings, and allied duties of Hearing Officer in concluding a case. Notwithstanding the foregoing, if in the County Attorney's sole discretion a case merits additional time to conclude the Hearing Officer's rendition of services in the case, the County Attorney may approve invoices exceeding the foregoing maximum amount by up to an additional One Thousand Five Hundred Dollars (\$1,500.00). There will be no compensation for travel time to and from the hearing nor reimbursement of expenses. It is further

agreed that Hearing Officer shall not bill County for time spent becoming familiar with the applicable ordinances, statutes, rules, and regulations.

- 3.2 Hearing Officer may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. An original invoice plus one (1) copy are due within fifteen (15) days after the end of the month, except the final invoice that must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed. Hearing Officer shall submit the invoice, attached as Exhibit "A," when requesting payment. Said invoice shall be consistent with the requirements of this Agreement and Exhibit "B," attached hereto.
- 3.3 To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the attached form and pursuant to the instruction prescribed by County. Payment may be withheld for failure of Hearing Officer to comply with a term, condition, or requirement of this Agreement.
- 3.4 County shall pay Hearing Officer within thirty (30) calendar days after receipt of Hearing Officer's proper statement, as required by the Broward County Prompt Payment Ordinance, Section 1-51.6, Broward County Code of Ordinances.
- 3.5 Payment shall be made to Hearing Officer at:

Article 4 - Term and Time of Performance

- 4.1 The term of this Agreement shall be five (5) years from the Effective Date. The continuation of this Agreement beyond the end of any fiscal year shall be subject to the availability of funds from County in accordance with Chapter 129, Florida Statutes, as may be amended from time to time.
- 4.2 Time shall be deemed to be of the essence in performing the duties, obligations, and responsibilities by this Agreement.

Article 5 - Termination

- 5.1 This Agreement may be terminated by either Party for cause if a purported material breach is not cured within ten (10) days after the nonbreaching Party provides written notice thereof to the Party purported in breach. This Agreement may also

be terminated by the County Attorney for convenience upon no less than thirty (30) days' notice. All notices shall be in accordance with the "Notices" section of this Agreement.

- 5.2 Termination of this Agreement for cause shall include, but not be limited to, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of County as set forth in this Agreement, or multiple breach of the provisions of this Agreement, notwithstanding whether any such breach was previously waived or cured.
- 5.3 In the event this Agreement is terminated for convenience, Hearing Officer shall be paid for any services performed to the date this Agreement is terminated; however, upon being notified of County's election to terminate, Hearing Officer shall refrain from performing further services or incurring additional expenses under the terms of this Agreement, except as indicated in the notice of termination. Hearing Officer acknowledges and agrees that Ten Dollars (\$10.00) of the compensation to be paid by County, the adequacy of which is hereby acknowledged by Hearing Officer, is given as specific consideration to Hearing Officer for County's right to terminate this Agreement for convenience.

Article 6 - Record Audit and Inspection

- 6.1 County shall have the right to audit the books and records of Hearing Officer pertinent to the funding under this Agreement. Hearing Officer shall preserve and make available, at reasonable times for examination and audit by County, all financial records, supporting documents, and other documents pertinent to this Agreement for a period of three (3) years after termination of this Agreement or, if any audit has been initiated and audit findings have not been resolved at the end of the three (3) years, the books and records shall be retained until resolution of the audit findings.
- 6.2 If the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, is determined by County to be applicable to Hearing Officer's records, Hearing Officer shall comply with all requirements thereof; however, no confidentiality or nondisclosure requirement of either federal or state law shall be violated by Hearing Officer.

Article 7 - Conflict of Interest

- 7.1 By entering into this Agreement, Hearing Officer affirms that he or she is familiar with and will comply with the provisions of Chapter 112, Part III, Florida Statutes, Code of Ethics, as may be amended from time to time.

- 7.2 Hearing Officer certifies that he or she does not know of any facts concerning this Agreement and the services to be performed that constitute a violation of said statute. County's conflict of interest policy is more restrictive than the Code of Ethics governing attorney conduct and the County Attorney, in his or her sole discretion, shall have the final authority to determine whether a conflict exists.
- 7.3 It is important that Hearing Officer be independent and impartial in order to properly perform services pursuant to this Agreement. Hearing Officer shall not act as an attorney in any lawsuit or other adversary proceeding in which County is named as an adversary party or in which Hearing Officer takes an adverse position to County. Hearing Officer is prohibited from engaging in a practice where he or she represents a client in a matter adverse to the interests of County. Hearing Officer is prohibited from serving as a lobbyist, as defined in Section 1-261, Broward County Code of Ordinances, as may be amended from time to time.
- 7.4 If, at any time Hearing Officer, or a firm with which Hearing Officer works, desires to represent a client in matters having to do with the Broward County government, be it before the Board of County Commissioners or any other agency or division of Broward County government, Hearing Officer will contact the Office of the County Attorney before Hearing Officer or the firm undertakes such representation so that it can be determined whether a conflict of interest exists.

Article 8 - Indemnification

Hearing officer shall at all times hereafter indemnify, hold harmless and, at County's option, defend or pay for an attorney selected by the County Attorney to defend County, its officers, agents, servants, and employees against any and all claims, losses, liabilities, and expenditures of any kind, including attorneys' fees, court costs, and expenses, sustained by Hearing Officer or caused by any intentional or negligent act or omission of Hearing Officer, its employees, agents, servants, or officers, accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by the Contract Administrator and the County Attorney, any sums due Hearing Officer under this Agreement may be retained by County until all of County's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by County. Hearing Officer shall maintain at its own expense the appropriate insurance coverage with companies authorized to do business in the state of Florida and upon whom service may be made in Broward County. Broward County shall be named an additional insured on all pertinent policies. Hearing Officer further agrees to provide proof of insurance and/or copies of policies upon request from the Risk Management Division.

Article 9 - Insurance

- 9.1 Hearing Officer shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement, workers' compensation insurance coverage. Such policy or policies shall be issued by companies authorized to do business in the state of Florida, and having agents upon whom service of process may be made in Broward County. Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of Hearing Officer is completed. If coverage will expire prior to completion of the work, copies of renewal policies shall be furnished to the Risk Management Division at least thirty (30) calendar days prior to the date of expiration.
- 9.2 If Hearing Officer is acting in the capacity as an individual, sole proprietorship, Professional Association (P.A.), Limited Liability Company (L.L.C.), or Professional Limited Liability Company (P.L.L.C.) pursuant to Chapter 608 or 621, Florida Statutes, and Hearing Officer is either not required by Chapter 440, Florida Statutes, to maintain workers' compensation coverage or has elected to be exempt from the provisions of Chapter 440, Florida Statutes, Hearing Officer shall not be required to maintain workers' compensation insurance coverage as set forth in Section 9.1 above. A condition of this exception is that Hearing Officer hereby agrees that no officer, employee, subcontractor, or other party affiliated with Hearing Officer, other than Hearing Officer, shall perform services pursuant to this Agreement. If Hearing Officer ceases to meet the requirements of this exception during the term of this Agreement, Hearing Officer hereby agrees to provide notice of same and evidence of required workers' compensation insurance coverage, as set forth in Section 9.1, to the Risk Management Division.
- 9.3 Prior to execution of this Agreement by County, Hearing Officer shall provide to the Risk Management Division evidence that Hearing Officer is acting in the capacity as an individual or sole proprietorship, a Notice of Election to be Exempt pursuant to Chapter 440, Florida Statutes, a Certificate of Insurance, or a copy of the workers' compensation insurance policy, as applicable.
- 9.4 County reserves the right to review and revise any insurance requirements at the time of renewal or amendment of this Agreement including, but not limited to, deductibles, limits, coverage, and endorsements based on insurance market conditions affecting the availability or affordability of coverage, or changes in the scope of work or specifications that affect the applicability of coverage.

Article 10 - Independent Contractor

Hearing Officer is an independent contractor under this Agreement. Services provided by Hearing Officer shall be subject to the supervision of Hearing Officer, and such

services shall not be provided by Hearing Officer as an officer, employee, or agent of County.

Article 11 - Nondiscrimination, Equal Opportunity, and
Americans with Disabilities Act

- 11.1 Hearing Officer shall not unlawfully discriminate against any person in its operations, activities, or use or expenditure of the funds or any portion of the funds provided by this Agreement and shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services funded in whole or in part by County, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards.
- 11.2 Hearing Officer's decisions regarding the delivery of services under this Agreement shall be made without regard to or consideration of race, age, religion, color, gender, gender identity and expression, pregnancy, sexual orientation, national origin, marital status, physical or mental disability, political affiliation, or any other factor that cannot be lawfully or appropriately used as a basis for service delivery (Broward County Code of Ordinances, Chapter 16½, as may be amended from time to time).
- 11.3 Hearing Officer shall comply with Title I of the ADA regarding nondiscrimination on the basis of disability in employment and shall take affirmative action to ensure nondiscrimination against employees or applicants for employment because of race, age, religion, color, gender, gender identity and expression, pregnancy, sexual orientation, national origin, marital status, political affiliation, or physical or mental disability. In addition, Hearing Officer shall take affirmative steps to ensure nondiscrimination in employment against disabled persons. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay, other forms of compensation, terms and conditions of employment, training (including apprenticeship), and accessibility.
- 11.4 Hearing Officer shall not engage in or commit any discriminatory practice in violation of the Broward County Human Rights Act (Broward County Code of Ordinances, Chapter 16½, as may be amended from time to time) in performing the Scope of Services or any part of the Scope of Services of this Agreement.

Article 12 - Public Entity Crimes Act

- 12.1 Hearing Officer represents that the execution of this Agreement will not violate the Public Entity Crimes Act, Section 287.133, Florida Statutes, as may be amended

from time to time, which essentially provides that a person or affiliate who is a contractor, consultant, or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to County, may not submit a bid on a contract with County for the construction or repair of a public building or public work, may not submit bids on leases of real property to County, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with County, and may not transact any business with County in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid hereto, and may result in debarment from County's competitive procurement activities.

- 12.2 In addition to the foregoing, Hearing Officer further represents that there has been no determination, based on an audit, that he or she has committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that he or she has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether Hearing Officer has been placed on the convicted vendor list.

Article 13 - Notices

In order for notice to a Party to be effective under this Agreement, notice must be sent via U.S. first class mail with a contemporaneous copy via email to the address listed below and will be effective upon mailing. The addresses for notice will remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this section.

For County:

Andrew J. Meyers, County Attorney
Broward County Governmental Center, Room 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Email address: AMeyers@broward.org

For Hearing Officer:

Email address:_____

Article 14 - Assignment and Performance

- 14.1 Neither this Agreement nor any interest herein shall be assigned, transferred, or otherwise encumbered by either Party. Hearing Officer shall not subcontract any portion of the work required by this Agreement.
- 14.2 Hearing Officer shall perform the duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of Hearing Officer's performance and the product provided to or on behalf of County shall be comparable to the best local and national standards.

Article 15 - Miscellaneous

- 15.1 Third party beneficiaries. Neither Hearing Officer nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties agree that there are no third-party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.
- 15.2 Materiality and waiver of breach. Failure by County to enforce any provision of this Agreement shall not be deemed a waiver of the provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. County and Hearing Officer agree that each requirement, duty, and obligation set forth herein was bargained for at arms' length and is agreed to by the Parties in exchange for quid pro quo, that each is substantial and important to the formation of this Agreement, and that each is a material term hereof.
- 15.3 Compliance with laws. Hearing Officer shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing the duties, responsibilities, and obligations related to this Agreement.
- 15.4 Severance. In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless County or Hearing Officer elects to terminate this Agreement. The

election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

- 15.5 Joint preparation. Each Party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party.
- 15.6 Priority of provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 15 of this Agreement shall prevail and be given effect.
- 15.7 Jurisdiction, venue, waiver of jury trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The Parties agree and accept that jurisdiction of any controversies or legal problems arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder, shall be exclusively in the state courts of the Seventeenth Judicial Circuit in Broward County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either Party may claim by virtue of its residency or other jurisdictional device. **BY ENTERING INTO THIS AGREEMENT, HEARING OFFICER AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**
- 15.8 Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the County Attorney and Hearing Officer, or others delegated authority to or otherwise authorized to execute same on their behalf.
- 15.9 Prior agreements. This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. Upon the Effective Date of this Agreement, any prior or existing agreements between the Parties for Hearing Officer services shall be deemed terminated and all Hearing Officer services shall be performed and

governed pursuant to the terms of this Agreement. The Parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written. It is further agreed that no modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document in accordance with Section 15.8 above.

15.10 Incorporation by reference. The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the Parties. The attached Exhibits "A" and "B" are incorporated into and made a part of this Agreement.

15.11 Multiple originals. Multiple copies of this Agreement may be executed by the Parties, each of which, bearing original signatures, shall have the force and effect of an original document.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the respective dates under each signature: Broward County, through its Board of County Commissioners, signing by and through its County Attorney, authorized to execute same by Board action on the ____ day of _____, 20____, and Hearing Officer.

County

Broward County, through its
County Attorney

By _____
Andrew J. Meyers, County Attorney
____ day of _____, 2021.

Approved as to form by
Office of the Broward County Attorney
Andrew J. Meyers, County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600

By _____
Maite Azcoitia
Deputy County Attorney

Agreement for Hearing Officer Services

Hearing Officer

WITNESSES:

Signature

By _____
Signature

Print/Type Name

___ day of _____, 2021.

Signature

Print/Type Name

MA/gmb
Hearingofficer-a01
04/05/2021
#10000.0001

EXHIBIT "B"

The following represents Broward County's payment requirements for legal costs.

- < Your federal employee identification number must be on all invoices submitted.
- < No service, interest, or other charge of like nature is to be imposed with regard to any item, invoice, or request. All firms doing business with Broward County must have a current Form W-9 "Request for Taxpayer Identification Number and Certification" on file. Vendor registration is also available on-line through the County's Internet site, "<http://www.broward.org/Guests/pui00800.htm>". Broward County Sales Tax Exempt Number is 16-03-199735-53C. Broward County's Federal Tax Exemption number is 59-6000531.
- < Services rendered must be specifically and concisely identified.
- < Names of persons performing services, hourly rates, and dates must be listed.
- < Legal Research costs (Lexis/Nexus, Westlaw, etc.) shall not be reimbursed.